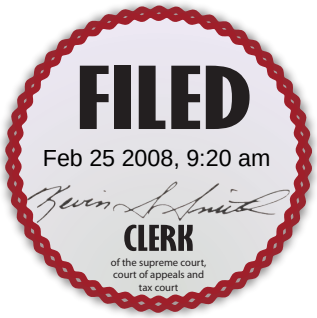

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IN THE
COURT OF APPEALS OF INDIANA

WILLIE JAMES DUMES,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 29A04-0706-CR-332
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HAMILTON SUPERIOR COURT
The Honorable Daniel J. Pfleging, Judge
Cause No. 29D02-0411-MR-159

February 25, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Willie James Dumes appeals his conviction for Murder,[1] a felony, and the finding that he was a Habitual Offender.[2] Specifically, Dumes claims that police officers improperly seized his clothing from a residence, that certain character evidence was erroneously admitted at trial regarding Dumes's relationship with the victim, that a surveillance videotape showing Dumes's whereabouts on the day of the murder was improperly admitted into evidence, and that the trial court improperly prevented Dumes's counsel from questioning a police officer regarding certain statements that the victim's boyfriend gave to police officers. Finally, Dumes alleges that the sentence must be set aside because the trial court improperly relied on his criminal history as the sole aggravator in enhancing the sentences for both murder and the habitual offender determination. Finding no error, we affirm the judgment of the trial court.

FACTS

In March 2003, eighteen-year-old Stephanie Gillum began a relationship with twenty-nine-year-old Dumes. Gillum began staying at Dumes's Indianapolis residence "off and on" in April, and she became pregnant in June with Dumes's child. Tr. p. 611.

At some point, Gillum moved in with her mother, Jan Gillum. Dumes would frequently call Gillum and harass her while she was living with Jan. At times, Dumes accused Gillum of infidelity and referred to her as his wife even though they were not married. Occasionally, Dumes would send Jan letters of apology for his behavior.

[1] Ind. Code § 35-42-1-1(1).

[2] Ind. Code § 35-50-2-8(a).

In September 2003, Gillum moved into her own apartment. However, Dumes continued to call both Gillum and her mother. On one occasion, Dumes told Jan that he and Gillum had a "really bad fight and I hit her and she left." Id. at 621. Jan noticed that Gillum had a black eye, split lip, bruises on her arm, and marks on her chin. Although Dumes was arrested for these offenses, he was released from jail in January 2004.

Gillum gave birth to her son on March 11, 2004. When Dumes saw the infant, he stated that the baby looked like Gillum and nothing like Dumes. Dumes visited the child from time to time and, on one occasion, he told Gillum that the child could not be his.

In June 2004, Gillum began dating Michael Massey. Dumes continued calling Gillum, and on one occasion, he told Jan that she had better get her "go****n daughter . . . off the streets and get her home or [he would] f**k her up." Id. at 630. When Jan asked Gillum what he meant by that comment, Dumes responded that he would hurt Gillum "very badly." Id. at 630. Dumes called back five minutes later and said that he would kill Gillum and that it would "be on [Jan's] head if [she] didn't get her home." Id. Dumes later called Gillum and threatened to kill her, Jan, the baby, and himself. During the conversation, Dumes told Gillum that he had a gun and made a "clicking noise" in the telephone. Id. at 631.

In late July, Jan became concerned for the baby's well being and Gillum's lack of responsibility for the child. As a result, Jan spoke with an attorney and filed a petition for custody of the child. Both Gillum and Dumes attended the hearing, and Jan was ultimately awarded custody. As they were leaving the courtroom, Dumes grabbed the baby's shoulders

and told Jan that she would "not get away with this." Id. at 634. Later that same day, Gillum moved in with Massey.

On August 10, 2004, Gillum picked up a friend, Felicia McKeller, and the two went back to Gillum's residence to drink and listen to music. At some point, Dumes called Gillum and told her that he would kill himself if she refused to meet him. Dumes called Gillum six or seven times while McKeller was at the apartment. When Gillum was leaving to take McKeller home, Gillum grabbed a gun and placed it on the floor of her vehicle behind the passenger's seat. At some point during the trip, Dumes called again. When McKeller arrived at her house, she realized that she had left a photograph in Gillum's vehicle. McKeller attempted to call Gillum on her cell phone, but Dumes answered the phone and told her that Gillum would call her back. McKeller last spoke with Gillum between 10:00 p.m. and 11:00 p.m., and Gillum did not answer her cell phone when McKeller attempted to call her later that evening.

At approximately 10:30 p.m., Dumes met with a former girlfriend, Aleashalia Boss. Boss stated that she had never seen Dumes "so like hypertension, [sic] but I thought maybe he just came from playing basketball or something hard." Id. at 865. When Boss refused to enter Dumes's vehicle, he displayed a handgun. Thereafter, Boss got into the vehicle and noticed that Dumes appeared "jittery, sweaty, shaken up, and acted really strange." Id. at 867-68.

Later that evening, at approximately 11:45 p.m., Dumes called his girlfriend, Sia Jenkins, and told her that he was "coming over." Id. at 852-53. Dumes told Jenkins that if

anyone asked when he was at her residence, she should reply no later than 10:30 p.m. Id. at 855. Dumes left Jenkins's residence the next morning at 9:15.

Joice Burnin, another acquaintance of Dumes's, testified that she met with Dumes early in the day on August 10. At some point, Burnin saw Dumes leave his house with "a silver revolver and another gun." Burnin also saw Dumes put a clip in the revolver. Id. at 908.

At approximately 6:30 a.m. on August 11, 2004, the Carmel Police discovered Gillum's body inside her vehicle, which was at Hazel Landings Park in Hamilton County. It was determined that Gillum had been shot twice in the head—just above the eye and in the left side of her skull. Later that day, Burnin observed Dumes take the guns out of the house in "a plastic bag." Id. at 911.

Dumes had occasionally stayed with his sister, Kimberly Dumes, and her children in Indianapolis. Kimberly slept in one bedroom and her children slept in another. The third bedroom contained a chair, a desk, a television, and some children's toys. Dumes kept his clothing and shoes in that room and slept on the couch in another room approximately one night per week. There were no doors to the rooms, and Kimberly had placed no restrictions as to who could enter the rooms.

On the morning of August 11, 2004, Dumes arrived at Kimberly's residence, where he bathed and changed clothes. After leaving his dirty clothes in one of the bedrooms, Dumes directed his fourteen-year-old cousin, D.J., to clean his shoes for him. Dumes was at the residence for less than one hour.

Shortly after the police discovered Gillum's body, they interviewed her stepfather, Michael Garrett. Garrett told the officers about the relationship between Gillum and Dumes. Garrett told the detectives that he suspected Dumes was involved in Gillum's death. The police then spoke to Dumes. Dumes claimed that on the night of the murder, he was at his girlfriend's house and stayed there until approximately 9:00 a.m. the next day. Later that evening, several police observed Dumes driving a Chevrolet Laguna. At some point, Dumes stopped the vehicle and ran from the scene, leaving the engine running. After learning that Dumes had been driving on a suspended driver's license, the police had the vehicle towed to the Carmel Police Department. The detectives searched the vehicle and found a receipt from a purchase that had been made at an Auto Zone store in Indianapolis on August 10.

On August 12, the police went to Kimberly's house and spoke with her and Dumes's fourteen-year-old cousin, D.J. D.J. told the officers that Dumes had taken a bath the day before and left some clothing in the house. He also told an officer that Dumes had asked him to clean his shoes. Kimberly also knew that Dumes had been there the previous day. Kimberly gave the police permission to look in the back bedroom where Dumes had left his clothes. D.J. directed the officers to the clothing, which was piled on a television set. Kimberly then permitted the police to remove the clothing and the rag that D.J. had used to clean Dumes's shoes.

The police obtained and reviewed a surveillance videotape dated August 10 from the Auto Zone store. The tape showed Dumes purchasing several items, and the detectives noticed that Dumes was wearing the same clothes in the video that they had recovered from

Kimberly's residence. A subsequent examination revealed that Gillum's DNA was on that clothing.

On November 19, 2004, Dumes was arrested and charged with murder and with being a habitual offender. On March 13, 2006, Dumes filed a motion to suppress, alleging, among other things, that the officers seized Dumes's clothing "without [Dumes's] consent, without a warrant, and without probable cause." Appellant's App. p. 186. Dumes's motion to suppress was denied, and a jury trial commenced on January 24, 2007.

At trial, the following evidence was admitted over Dumes's objection: 1) Dumes's prior battery offenses against Gillum; 2) Dumes's inappropriate behavior at the hospital when the parties' child was born; 3) Dumes's act of storming out of Gillum's residence after claiming that the child was not his; 4) threats that Dumes had made to Jan; 5) Dumes's inappropriate behavior at a guardianship hearing; and 6) Dumes's possession of a handgun at approximately 10:30 p.m. on August 10, when he demanded that Boss enter his vehicle.

Also during trial, the surveillance videotape that was taken on August 10 at the Auto Zone store was admitted into evidence. At some point during the trial, the trial court refused to permit Dumes's counsel to question Massey about some inconsistent statements that he had made to the police when they interviewed him. Dumes was also not allowed to question the police officer regarding the conversation he had with Massey regarding the ownership or possession of firearms.

Following the conclusion of the trial on January 31, 2007, Dumes was found guilty as charged and determined to be a habitual offender. During the habitual offender phase of the

trial, the State presented evidence that Dumas was convicted of C felony robbery in 1992, and Intimidation as a class D felony in 2002. At the sentencing hearing that was conducted on February 27, 2007, the trial court commented that "the defendant has an aggravating factor, probably more than one, but I'm going to just illicit [sic] the most apparent and obvious one which is the person has a history of criminal and delinquent activity." Tr. p. 1257. Indeed, the record shows that, beginning in 1987, Dumes accumulated five juvenile adjudications. Moreover, it was determined that Dumes had been convicted of nine criminal offenses, including automobile theft, resisting law enforcement, criminal recklessness, pointing a firearm, and carrying a handgun without a license. The trial court then sentenced Dumes to sixty-five years for murder, which was enhanced by thirty years on the habitual offender count. Dumes now appeals.

DISCUSSION AND DECISION

I. Search of Dumes's Clothing

Dumes first claims that "the police violated the 4th Amendment to the U.S. Constitution, and Article 1, Section 11 of the Indiana Constitution when they improperly seized and searched [his] clothing." Appellant's Br. p. 6. Specifically, Dumes contends that Kimberly lacked the authority to consent to the search and seizure of the clothing because those items had not been "abandoned or placed in any location where the police might have reasonably believed that Dumes was surrendering his exclusive right to control them." Id. at 9.

In resolving this issue, we initially observe that the standard used to review rulings "on the admissibility of evidence is effectively the same whether the challenge is made by a

pre-trial motion to suppress or by a trial objection." Burkes v. State, 842 N.E.2d 426, 429 (Ind. Ct. App. 2006), trans. denied. We will not reweigh the evidence, and we consider the conflicting evidence most favorable to the trial court's ruling. Id. However, we will also consider any uncontested evidence in favor of the nonmovant. Id. We will affirm the decision if it is supported by substantial evidence of probative value. Id. Moreover, the trial court's ruling will be upheld if it is sustainable on any legal theory supported by the record, even if the trial court did not use that theory. Gonser v. State, 843 N.E.2d 947, 950 (Ind. Ct. App. 2006).

A. The Fourth Amendment

The Fourth Amendment generally prohibits warrantless searches. Edwards v. State, 762 N.E.2d 128, 132 (Ind. Ct. App. 2002). The purpose of the Fourth Amendment is to protect the privacy and possessory interests of individuals by prohibiting unreasonable searches and seizures. Barfield v. State, 776 N.E.2d 404, 406 (Ind. Ct. App. 2002). The "touchstone of the Fourth Amendment is reasonableness," and reasonableness is measured in objective terms by examining the totality of the circumstances. Ohio v. Robinette, 519 U.S. 33, 39 (1996).

If a warrantless search is conducted, the burden is on the State to prove that, at the time of the search, an exception to the warrant requirement existed. Id. That is, searches conducted without a warrant are per se unreasonable, subject to a few well-delineated exceptions. Johnson v. State, 766 N.E.2d 426, 432 (Ind. Ct. App. 2002). Whether a particular warrantless search violates the guarantees of the Fourth Amendment depends upon

the facts and circumstances of each case. State v. Joe, 693 N.E.2d 573, 575 (Ind. Ct. App. 1998).

A well-recognized exception to the warrant requirement is a voluntary and knowing consent to search. Krise v. State, 746 N.E.2d 957, 961 (Ind. 2001). The scope of a consensual search is measured by its objective reasonableness. Id. at 964. Additionally, a valid consent to search may be given by the person whose property is to be searched or a third party who has common authority or an adequate relationship to the premises to be searched. Norris v. State, 732 N.E.2d 186, 188 (Ind. Ct. App. 2000). Indeed, the United States Supreme Court has observed that "it is reasonable to recognize that any of the co-inhabitants has the right to permit the inspection in his own right and that the others have assumed the risk that one of their number might permit the common area to be searched." United States v. Matlock, 415 U.S. 164, 171 n.7 (1974).

We note that in some cases, where a co-occupant consents to a search, it has been held that persons sharing the premises may nonetheless retain areas or items within their exclusive control that are not subject to search based on one of the co-occupant's consent. Lee v. State, 849 N.E.2d 602, 606 (Ind. 2006). For instance, in Krise—a case that Dumes claims is dispositive—a man and a woman jointly occupied a house. The man consented to a search of the residence for drugs. While it was determined that his consent to search the premises was proper, the man could not have validly consented to the search of the woman's purse because it was a "closed container that normally holds highly personal items." 746 N.E.2d at 968.

In this case, the evidence demonstrated that Kimberly had actual authority over the

house and the room where Dumes kept his clothing. As noted above, Dumes was periodically staying with Kimberly and her children at the residence. Tr. p. 741, 749. Dumes kept his clothes and shoes in a room that contained a chair, a desk, a television set, and children's toys. Id. at 741-42. There were no doors on any of the bedrooms and no restrictions were placed as to who could or could not enter a particular room. Id. at 743. Moreover, Dumes's clothing was not in an area or a container where only he had exclusive control, and the evidence showed that Dumes slept on a couch in another room approximately one night per week. Id. at 742.

Because the evidence established that no steps were taken to deny or prevent access to the clothing, Dumes assumed the risk that Kimberly would permit the police to take the clothing. See Lee v. State, 849 N.E.2d 602, 606 (Ind. 2006) (observing that because the co-occupant had full access to all of the rooms in the residence, she had actual authority over the items that were seized). As a result, we conclude that Kimberly validly consented to the search of the room and the subsequent seizure of Dumes's clothing. Thus, Dumes's claim that his Fourth Amendment rights were violated fails.

B. The Indiana Constitution

Notwithstanding the above, Dumes argues that the police officers' actions violated Article I, section 11 of the Indiana Constitution. Analysis under that provision requires examination of the specific facts of each case and whether police conduct is reasonable in light of the totality of the circumstances. See Trowbridge v. State, 717 N.E.2d 138, 144 (Ind. 1999). As we consider reasonableness based upon the particular facts of each case, we also

give Article I, section 11 a liberal construction in favor of protecting individuals from unreasonable intrusions on privacy. State v. Gerschoffer, 763 N.E.2d 960, 965 (Ind. 2002). At the same time, "Indiana citizens have been concerned not only with personal privacy but also with safety, security, and protection from crime." Id. at 966. It is because of concerns among citizens about safety, security, and protection that some intrusions upon privacy are tolerated, so long as they are reasonably aimed toward those concerns. Thus, it has been recognized "that the totality of the circumstances requires consideration of both the degree of intrusion into the subject's ordinary activities and the basis upon which the officer selected the subject of the search or seizure." Litchfield v. State, 824 N.E.2d 356, 360 (Ind. 2005). Our determination of the reasonableness of a search or seizure under Section 11 often "turn[s] on a balance of: 1) the degree of concern, suspicion, or knowledge that a violation has occurred, 2) the degree of intrusion the method of the search or seizure imposes on the citizen's ordinary activities, and 3) the extent of law enforcement needs." Id. at 361.

In this case, the evidence showed that the police had a great degree of suspicion and knowledge that Dumes was involved in Gillum's death. On the day that Gillum's body was found, Garrett talked with police officers and informed them of his suspicions regarding Dumes's involvement. Tr. p. 14, 16, 68-69. Following the initial encounter with police, Dumes acted suspiciously and attempted to flee from the officers in his vehicle when he learned of their presence. Id. at 21, 23-24. When the police officers went to Kimberly's house, they learned that Dumes had returned to the residence on the morning after Gillum's death, changed clothes, and had his shoes cleaned. Id. at 807-07. Thereafter, the police

seized the clothing that Dumes had worn on the morning that Gillum's body was discovered.

Second, the evidence shows that the degree of intrusion that the search and seizure imposed on Dumes's life was minimal. In particular, the evidence established that four plainclothes officers went to Kimberly's residence and spoke with her. Id. at 32, 33-34, 43, 45. The officers made it clear to Kimberly and D.J. that they were only going to be there with their consent. Kimberly was cooperative, and she allowed the officers to search the residence. D.J. voluntarily answered the officers' questions, showed them Dumes's clothes, and Kimberly gave them permission to take the clothes that were piled on a television set. Id. at 34, 45, 747, 808, 827-30. Under these circumstances, it is apparent that the search and seizure of Dumes's clothing was narrowly tailored, minimally obtrusive, and based on the voluntary participation of the co-residents.

Additionally, the evidence demonstrates that the police had a clear need to obtain the clothing to prevent the possible destruction or loss of that evidence. While it was certainly possible for the officers to obtain a search warrant, Kimberly gave the officers permission to take the clothing. Moreover, had the officers applied for a warrant, their presence at the residence would have been extended and their encounter with Kimberly and D.J. would have been more intrusive. As a result, there is nothing to suggest that the officers' actions were unreasonable during the course of their investigation. Hence, Dumes's contention that his rights under Article I, section 11 of the Indiana Constitution were violated fails.

II. Character Evidence—Dumes's Relationship With Gillum

Dumes next contends that his conviction must be reversed because the trial court

admitted improper character evidence at trial in violation of Indiana Evidence Rule 404(b). Specifically, Dumes claims that the following evidence should not have been admitted: 1) Dumes committed a prior battery on Gillum; 2) Dumes behaved inappropriately when the parties' child was born; 3) on one occasion, Dumes stormed out of Gillum's residence after claiming that the child was not his; 4) Dumes threatened Gillum's mother; 5) Dumes behaved inappropriately at a hearing establishing guardianship over the baby in favor of Gillum's mother; and 6) Dumes had a gun at approximately 10:30 p.m. on August 10 when he demanded that Boss enter his vehicle and talk to him.

In resolving Dumes's contentions, we note that the trial court has broad discretion when ruling on the admissibility of evidence. Barrett v. State, 837 N.E.2d 1022, 1026 (Ind. Ct. App. 2005). We will reverse a trial court's ruling on the admissibility of evidence only for an abuse of discretion. Id. An abuse of discretion involves a decision that is clearly against the logic and effect of the facts and circumstances before the trial court. Id.

In support of his contention that the above evidence was improperly admitted, Dumes directs us to Indiana Evidence Rule 404(b):

> Other Crimes, Wrongs, or Acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, intent, preparation, plan, knowledge, identity or absence of mistake or accident.

In addition to the above, Evidence Rule 403 provides that "although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair

prejudice, confusion of the issues, or misleading the jury, . . . or needless presentation of cumulative evidence."

With regard to Dumes's statements that the child could not be his, we note that such statements do not fall within the parameters of Evidence Rule 404(b). Specifically, such evidence does not relate to a crime, wrong, or act that proves Dumes's bad character. Rather, that evidence demonstrates Dumes's suspicion that the child was not his and the strained relationship that he had with Gillum and the child. Nonetheless, even assuming solely for argument's sake that this evidence was offered by the State to show the existence of Dumes's "bad acts," it is apparent that the evidence was admissible to show motive. See Hicks v. State, 690 N.E.2d 215, 222 (Ind. 1997) (holding that evidence of the defendant's violent relationship with the victim is admissible to show motive). Moreover, such evidence was particularly probative because of its temporal proximity to Gillum's death.

Similarly, the evidence regarding the prior battery of Gillum and the threats directed toward her and her family was also properly admitted as evidence of motive. See Ross v. State, 676 N.E.2d 339, 346 (Ind. 1996) (recognizing that a defendant's prior bad acts are usually admissible to show the relationship between the defendant and the victim); see also Elliott v. State, 630 N.E.2d 202, 204 (Ind. 1994) (holding that prior threats of violence committed against the defendant's former wife and the victim were admissible to show the relationship between the parties and the defendant's motive).

In our view, the evidence regarding Dumes's previous assault on Gillum, the threats regarding the custody of the child, and the threats to kill Gillum and her family also relates to

Dumes's motive. The evidence established that Dumes brutally battered Gillum following an argument in October 2003. Their child was born in March 2004, and several months later, Gillum began dating Massey. Tr. p. 635, 728, 776. Nonetheless, in July 2004, Dumes called Gillum's home constantly and told her mother on one occasion that he might "f**k [Gillum] up." Id. at 630. Dumes called back and threatened to kill Gillum, her mother, the baby, and himself. Id. 631. In essence, this evidence demonstrated that the violence and tension in the relationship had not changed. Also, contrary to Dumes's claim, the battery was not remote, but, instead, was one of the initial signs of violence and hostility in the relationship. Moreover, although some of the threats were not directly aimed at Gillum, they constituted evidence of Dumes's motive to kill Gillum for her refusals to comply with his demands. In our view, the probative value of the evidence outweighed any danger of unfair prejudice, and Dumes's claim that this evidence was improperly admitted fails.

With regard to the evidence establishing Dumes's possession of the handgun on the evening that Gillum was killed, we note that his mere possession of the weapon is not a prior "bad act" in accordance with Evidence Rule 404(b). Rather, that evidence was directly connected to the charged crime. See Williams v. State, 690 N.E.2d 162, 174 (Ind. 1997) (recognizing that "it is by no means clear that weapons possession, evidence of gun sales, and the like, are necessarily prior 'bad acts' for 404(b) purposes").

Here, the jury knew that Dumes was arrested shortly after he battered Gillum and was released from jail in January 2004. Even though Dumes accumulated several prior felony convictions, the jury did not learn of those convictions until after the guilt

phase of the trial was completed. Appellant's App. p. 428-29. As a result, we reject Dumes's contention that evidence of his possession of the handgun violated Evidence Rule 404(b).

III. Videotape Evidence

Dumes contends that the trial court erred in admitting the surveillance videotape of his presence at the Auto Zone store near the time of Gillum's death. Specifically, Dumes argues that the tape should not have been admitted because it was "unauthenticated, unreliable, and irrelevant." Appellant's Br. p. 13.

At the outset, we note that Dumes did not object to the admission of the tape on the above grounds at trial. Rather, Dumes's counsel argued only that "there is not sufficient testimony to link [the] video with that particular Exhibit." Tr. p. 931, 933. As a result, the issue is waived. See Williams v. State, 830 N.E.2d 107, 111 (Ind. Ct. App. 2005) (holding that a defendant may not object on one ground at trial and argue a different ground on appeal).

Waiver notwithstanding, we note that videotapes may be admitted as substantive evidence under the "silent witness" theory. McHenry v. State, 820 N.E.2d 124, 128 (Ind. 2005). However, there must be a strong showing of authenticity and competency. Id. When automatic cameras are involved, there should be evidence of how and when the camera was loaded, how frequently the camera was activated, when the photographs were taken, and the processing and changing of custody of the film after its removal from the camera. Id.

As discussed above, the police discovered a sales receipt from Auto Zone store dated

August 10, 2004, at 6:30 p.m. inside Dumes's vehicle. Tr. p. 654-59. Thereafter, the police officers went to Auto Zone and requested the videotape. A store manager reviewed the tape with the officers. Id. at 928. The tape was dated and time stamped, and it showed Dumes entering and leaving the store. The manager of the Auto Zone testified that there was a connection between the video feed and the cash registers to determine when the transactions occurred. Id. Although the manager acknowledged that it was "possible" for the video to be "off" by four to seven minutes, the manager examined Dumes's receipt and the video and determined that the tape was an accurate representation of the transaction. Id. at 931. When studying the video, the officers observed that Dumes was wearing the same clothes that were later seized from Kimberly's residence. As noted above, Gillum's DNA was found on that clothing. Id. at 1044, 1081, 1086, 1089, 1091.

Contrary to Dumes's assertions, we find that the evidence adequately established the tape's authenticity. There is a relatively short amount of time between when the video was taken and its discovery by police. Moreover, the manager testified that the video was an accurate representation of the transaction involving Dumes. Id. at 931. Although it might have been possible for the receipt and video to have been "off" by a few minutes, we find that such candid testimony about the possibility of error does not negate or significantly affect the manager's testimony regarding the authenticity or competency of the videotape. For all of these reasons, we conclude that the videotape was properly admitted into evidence.

IV. Questioning of Police Officers

Dumes next argues that the trial court improperly prevented him from eliciting

testimony from an investigating police officer about interviews that were conducted with Massey, who was Gillum's boyfriend at the time of her death. Moreover, Dumes claims that the trial court improperly refused to permit Dumes's counsel to ask the officer if he had asked Massey as to whether he owned any firearms. Because Massey initially denied knowing Dumes, but subsequently admitted that he knew him, Dumes sought to have such evidence admitted to show that Massey had been evasive with the police. Id. at 1114. However, after hearing argument, the trial court sustained the State's objections and excluded that proffered evidence.

Contrary to Dumes's claims, we do not see how Massey's evasiveness with the police or whether he owned any firearms was relevant as to the ultimate inquiry—whether Dumes committed the murder. Indeed, Dumes offers no argument in support of the significance of such evidence or how it might have tended to disprove his commission of the offense. As a result, we conclude that the trial court did not err in disallowing Dumes to question the police officer about Massey's alleged evasiveness.

V. Sentencing

Finally, Dumes contends that he was improperly sentenced. Specifically, Dumes argues that his sentence must be set aside because the trial court's finding of a single aggravating factor—Dumes' criminal history and juvenile adjudications—as the reason for imposing the maximum sentence for murder and an enhanced sentence on the habitual offender count was erroneous.

At the sentencing hearing, the trial commented that "the defendant has an aggravating

factor, probably more than one, but I'm going to just illicit the most apparent and obvious one which is the person has a history of criminal and delinquent activity." Tr. p. 1257. Therefore, Dumes claims that his sentence cannot stand because it is apparent that the trial court could not have properly enhanced the sentence for murder that was based solely on the offenses that were used to establish his status as a habitual offender.[3]

Notwithstanding this contention, our Supreme court in McVey v. State, 531 N.E.2d 458, 461 (Ind. 1988), determined that although a trial court may not enhance a sentence using a criminal history that only includes the convictions used to support the habitual offender finding, it is otherwise not improper to use that aggravator to impose an enhanced sentence.

As noted above, Dumes's criminal history is substantial. He has accumulated a number of juvenile adjudications, and he has six felony and three misdemeanor convictions. Appellant's App. p. 429.

During the habitual offender phase of the trial, the jury found that Dumes had a prior class C robbery conviction in 1992, and a prior conviction for intimidation as a class D felony in 2002. Id. at 419. And, as noted above, Dumes's criminal history includes a number of convictions in addition to those that were used to prove the habitual offender count. Other than Dumes's bare assertion, there is no indication from the sentencing statement that the trial court considered only the convictions used to support the habitual offender count to enhance the sentence for murder. Tr. p. 1257. To the contrary, the trial court's reference to Dumes's delinquent activity—which was obviously not used to support

[3] Although Dumes cites Pedraza v. State, 873 N.E.2d 1083 (Ind. Ct. App. 2007), in support of that proposition, our Supreme Court granted transfer in that case on November 8, 2007, thereby vacating this

the habitual offender finding—indicates that it considered his entire criminal history, and not just the convictions that were established to prove the habitual offender finding. Thus, because it is presumed that the trial court knows the applicable law, State v. Glasscock, 759 N.E.2d 1170, 1174 (Ind. Ct. App. 2001), we cannot say that the trial court erred in sentencing Dumes.

The judgment of the trial court is affirmed.

DARDEN, J., and BRADFORD, J., concur.

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court's opinion. As of this date, no opinion has been issued.